

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

FLOYD DAVIS,)
vs.)
Petitioner,)
TERRI ROWE, *et al.*,)
Respondent.)
NO. CIV-21-0188-HE

ORDER

Petitioner Floyd Davis filed a putative Sections 2254 and 2255 habeas petition¹ alleging that he is being held illegally in the Warr Acres Nursing Center. His motion to proceed *in forma pauperis* was referred to Magistrate Judge Shon T. Erwin pursuant to 28 U.S.C. § 636(b)(1)(B) and (C). Judge Erwin ordered petitioner to cure his IFP motion by submitting his application on the proper form or pay the \$5 filing fee on or before March 31, 2021. The appropriate form was mailed to petitioner with Judge Erwin's order. Petitioner never filed the appropriate form, so on April 30, 2021, Judge Erwin issued a Report and Recommendation recommending that the petition be dismissed for failure to comply with the court's orders. The Report advised petitioner of his right to object on or before May 17, 2021. Petitioner then filed a letter dated May 13, 2021, requesting that another copy of the IFP form be sent to his address. This was done so on May 19, 2021.

¹ Neither provision appears to apply to petitioner. 28 U.S.C. § 2254 permits an application for a writ of habeas corpus for “person in custody pursuant to the judgment of a State court.” Section 2255 permits writs for persons in federal custody. The petition states that petitioner entered the nursing home “on his own will.”

To date, petitioner has not properly filed an application to proceed IFP or objected to the Report. Having not objected to the Report, petitioner has waived his right to appellate review of the factual and legal issues it addressed. Casanova v. Ulibarri, 595 F.3d 1120, 1123 (10th Cir. 2010).

Accordingly, the court **ADOPTS** the Report and Recommendation [Doc. #7]. The petition [Doc. #1] is **DISMISSED** without prejudice for failure to comply with the court's orders. Petitioner's Motion to Expedite [Doc. #9] is **STRICKEN** as moot.

IT IS SO ORDERED.

Dated this 14th day of June, 2021.



JOE HEATON
UNITED STATES DISTRICT JUDGE